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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE CINCINNATI SPECIALTY
UNDERWRITERS INSURANCE COMPANY,

Plaintiff,

v.

RED ROCK HOUNDS, a Domestic Nonprofit
Cooperative Corporation Without Stock (81)
[sic]; LYNN LLOYD, individually; and
TRACY TURNBOW (Interested Party),

Defendants.

Case No. 3:20-cv-0272-MMD-BNW

AND RELATED CLAIMS.

REPLY TO OPPOSITION TO ALTERNATIVE MOTION TO STAY

Defendants, RED ROCK HOUNDS and BARBARA LYNN LLOYD, reply to the
opposition by plaintiff (ECF #27) to the alternative motion to stay these defendants filed
July 22, 2020 (ECF #15).

INTRODUCTION

Plaintiff owes these defendants quasi-fiduciary duties and must defend the
underlying state court case until such time as it can be proven that facts do not support
coverage under the subject insurance policy. Apparently, CSU wants to join forces with
Turnbow, the underlying plaintiff, to oppose its own insured, in what is no less than an act
of ultimate betrayal.

1 It is difficult to fathom a more unfair scenario than where the insurer throws
 2 in with the insured's adversary to prove no coverage, and, possibly, the existence of facts to
 3 justify punitive damages that would be excluded from coverage. The concept of good faith
 4 and fair dealing contemplates that defendants, the insureds, bargained to have their insurer
 5 and its weight on their side in the litigation, and not as an adversary in both cases. Further,
 6 CSU now wants to foist the costs of defending Turnbow's claims onto its insureds in this
 7 case, despite its promise to provide a defense. CSU unquestionably wants to deny
 8 defendants the benefits of their bargained for insurance, which is exactly what will happen
 9 if this case proceeds as plaintiff has it structured.

10 This case cannot go forward. Plaintiff's complaint is fatally flawed, and to allow
 11 CSU to join forces with Turnbow would be highly prejudicial to its insureds. Plaintiff offered
 12 no cogent analysis on either point. *Cf.*, LR 7-2(d).

13 **1. Defendants met their burdens of proof.**

14 Defendants acknowledged their burden to show the Court a stay of this case was
 15 warranted. That burden was met because defendants showed the Court plaintiff's claims
 16 cannot be decided without the benefit of factual determinations in the underlying case. The
 17 alternative, invoked by plaintiff, is for this Court to duplicate most of the state court's
 18 efforts. Either that court can do the "heavy lifting," or it falls to this Court. That case will be
 19 proceeding. This Court has the option to avoid pursuing duplicative efforts.

20 CSU did not even claim any prejudice or unfair tactical burden would befall it
 21 if this case were to be stayed pending the outcome of the underlying state court case. In fact,
 22 defendants are entitled to a full and vigorous defense of that case, and all related facts,
 23 without the insurer's interference for its own benefit. That is precisely what will occur if the
 24 core facts of the underlying case are to be tried in this case. How can CSU possibly meet its
 25 obligation to defend its insureds in the state court case while it is pressing those very claims
 26 against its insureds in this case? That is an entirely inappropriate conflict of interest—all to
 27 the insured's prejudice.

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1 CSU's insureds bargained to have their insurer defend them, not bring its
2 weight to bear against them.

3 **2. A stay in this case is warranted if it is not dismissed.**

4 The defendants all moved to dismiss this case because plaintiff's complaint is
5 nothing more than vague self-serving conclusions. While its complaint must be short and
6 simple, it must, nonetheless, meet certain minimum standards. Plaintiff must, in its
7 complaint, tell this Court what facts are at issue and how those facts trigger the exclusions
8 it relies on to evade coverage. Plaintiff did not meet that burden.

9 If this case survives the pending motion to dismiss, it should be stayed.

10 **3. Plaintiff relies on irrelevant authority.**

11 Rather than discuss any possible prejudice from a stay, plaintiff provides the
12 Court with authority it says shows it should be allowed to proceed. First, plaintiff cites *El*
13 *Capitan Club v. Fireman's Fund Ins. Co.*, 89 Nev. 65, ___, 506 P.2d 426 (1973), for the
14 proposition that declaratory relief can be granted an insurer before the underlying case is
15 resolved. That case dealt with an airplane crash resulting in 32 fatalities and multiple
16 lawsuits pertaining thereto. That factual scenario has nothing to do with this case, which
17 is literally a "one horse," case. Then, plaintiff cites *Knittle v. Progressive Cas. Ins. Co.*, 112
18 Nev. 8, 908 P.2d 724, 726 (1996) for the proposition that once demand for coverage is made
19 by the insured, declaratory relief is proper. *Knittle* actually stands for the proposition that
20 a declaratory relief action by a plaintiff in the underlying tort case does not present a ripe
21 controversy while that underlying tort case is still pending. Both legal citations of dubious
22 value to the tasks before this Court.

23 CONCLUSION

24 Defendants have met their burdens and plaintiff has not responded adequately.
25 Plaintiff has not shown good reason for Turnbow's underlying disputes to be litigated in
26 both this Court and the state court. In fact, if CSU is allowed to proceed in this Court to
27 litigate the determinative facts in the underlying tort case, the prejudice to the insureds will

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1 be very real. Rather than in "good hands," the insureds will not only be left to fend for
2 themselves, deprived of the defense they were promised, but they must try to match the
3 financial weight brought to bear against them by their own insurer. A more prejudicial
4 scenario is difficult to conjure.

5
6 WHEREFORE, defendants/counterclaimants pray the plaintiff's complaint be
7 dismissed, without leave to amend; or, in the alternative, this case be stayed until the
8 conclusion of the underlying state court case; and for such other, further, and additional
9 relief as seems just to the Court in the premises.

10 **AFFIRMATION Pursuant to NRS 239B.030**

11 The undersigned does hereby affirm that the preceding document does not
12 contain the social security number of any person.

13 DATED this 20th day of August, 2020.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of RICHARD G. HILL, ESQ., and that on the 20th day of August, 2020, I electronically filed the foregoing **Reply to Opposition to Alternative Motion to Stay** with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

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